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SENATE BILL 434

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Cisco McSorley

AN ACT

RELATING TO BOATING; ENACTING THE BOATING WHILE INTOXICATED  
ACT; PRESCRIBING PENALTIES FOR OPERATING A MOTORBOAT WHILE  
UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; AUTHORIZING TESTING OF  
A PERSON'S BLOOD OR BREATH FOR ALCOHOL OR DRUGS; AMENDING AND  
ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1  
through 12 of this act may be cited as the "Boating While  
Intoxicated Act".

Section 2. [NEW MATERIAL] DEFINITIONS. -- As used in the  
Boating While Intoxicated Act:

A. "bodily injury" means an injury to a person that  
is not likely to cause death or great bodily harm to the  
person, but does cause painful temporary disfigurement or

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1 temporary loss or impairment of the functions of any member or  
2 organ of the person's body;

3 B. "conviction" means an adjudication of guilt and  
4 does not include imposition of a sentence;

5 C. "motorboat" means any boat, personal watercraft  
6 or other type of vessel propelled by machinery, whether or not  
7 machinery is the principle source of propulsion. "Motorboat"  
8 includes a vessel propelled or designed to be propelled by a  
9 sail, but does not include a sailboard or a windsurf board.

10 "Motorboat" does not include a houseboat or any other vessel  
11 that is moored on the water, but not moving on the water; and

12 D. "operate" means to physically handle the  
13 controls of a motorboat that is moving on the water.

14 Section 3. [NEW MATERIAL] OPERATING A MOTORBOAT WHILE  
15 UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS. --

16 A. It is unlawful for a person who is under the  
17 influence of intoxicating liquor to operate a motorboat.

18 B. It is unlawful for a person who is under the  
19 influence of any drug to a degree that renders him incapable of  
20 safely operating a motorboat to operate a motorboat.

21 C. It is unlawful for a person who has an alcohol  
22 concentration of eight one hundredths or more in his blood or  
23 breath to operate a motorboat.

24 D. Aggravated boating while under the influence of  
25 intoxicating liquor or drugs consists of a person who:

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1 (1) has an alcohol concentration of sixteen  
2 one hundredths or more in his blood or breath while operating a  
3 motorboat;

4 (2) has caused bodily injury to a human being  
5 as a result of the unlawful operation of a motorboat while  
6 under the influence of intoxicating liquor or drugs; or

7 (3) refused to submit to chemical testing, as  
8 provided for in the Boating While Intoxicated Act, and in the  
9 judgment of the court, based upon evidence of intoxication  
10 presented to the court, was under the influence of intoxicating  
11 liquor or drugs.

12 E. Every person under first conviction pursuant to  
13 this section shall be punished, notwithstanding the provisions  
14 of Section 31-18-13 NMSA 1978, by imprisonment for not more  
15 than ninety days or by a fine of not more than five hundred  
16 dollars (\$500), or both; provided that if the sentence is  
17 suspended in whole or in part or deferred, the period of  
18 probation may extend beyond ninety days but shall not exceed  
19 one year. The offender shall be ordered by the court to attend  
20 a boating safety course approved by the national association of  
21 state boating law administrators. An offender ordered by the  
22 court to attend a boating safety course shall provide the court  
23 with proof that the offender successfully completed the course  
24 within seven months of his conviction or prior to completion of  
25 his probation, whichever period of time is less. In addition

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1 to those penalties, when an offender commits aggravated boating  
2 while under the influence of intoxicating liquor or drugs, the  
3 offender shall be sentenced to not less than forty-eight  
4 consecutive hours in jail and may be fined not more than seven  
5 hundred fifty dollars (\$750). On a first conviction under this  
6 section, any time spent in jail for the offense prior to the  
7 conviction for that offense shall be credited to any term of  
8 imprisonment fixed by the court. A deferred sentence pursuant  
9 to this subsection shall be considered a first conviction for  
10 the purpose of determining subsequent convictions.

11 F. A second or subsequent conviction pursuant to  
12 this section shall be punished, notwithstanding the provisions  
13 of Section 31-18-13 NMSA 1978, by imprisonment for not more  
14 than three hundred sixty-four days or by a fine of not more  
15 than seven hundred fifty dollars (\$750), or both; provided that  
16 if the sentence is suspended in whole or in part, the period of  
17 probation shall not exceed one year. In addition to those  
18 penalties, when an offender commits aggravated boating while  
19 under the influence of intoxicating liquor or drugs, the  
20 offender shall be sentenced to not less than forty-eight  
21 consecutive hours in jail and may be fined not more than one  
22 thousand dollars (\$1,000).

23 Section 4. [NEW MATERIAL] GUILTY PLEAS--LIMITATIONS.--  
24 When a complaint or information alleges a violation of Section  
25 3 of the Boating While Intoxicated Act, any plea of guilty

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1 thereafter entered in satisfaction of the charges shall include  
2 at least a plea of guilty to the violation of one of the  
3 subsections of Section 3 of that act, and no other disposition  
4 by plea of guilty to any other charge in satisfaction of the  
5 charge shall be authorized if the results of a test performed  
6 pursuant to that act disclose that the blood or breath of the  
7 person charged contains an alcohol concentration of eight one  
8 hundredths or more.

9 Section 5. [NEW MATERIAL] MUNICIPAL AND COUNTY  
10 ORDINANCES--UNLAWFUL ALCOHOL CONCENTRATION LEVEL FOR BOATING  
11 WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS.--No  
12 municipal or county ordinance prohibiting the operation of a  
13 motorboat while under the influence of intoxicating liquor or  
14 drugs shall be enacted that provides for an unlawful alcohol  
15 concentration level that is different than the alcohol  
16 concentration levels provided in Section 3 of the Boating While  
17 Intoxicated Act.

18 Section 6. [NEW MATERIAL] BLOOD-ALCOHOL TESTS-- PERSONS  
19 QUALIFIED TO PERFORM TESTS--RELIEF FROM CIVIL AND CRIMINAL  
20 LIABILITY.--Only a physician, licensed professional or  
21 practical nurse or laboratory technician or technologist  
22 employed by a hospital or physician shall withdraw blood from a  
23 person in the performance of a blood-alcohol or drug test. A  
24 physician, nurse, technician or technologist who withdraws  
25 blood from a person in the performance of a blood-alcohol or

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1 drug test that has been directed by a law enforcement officer,  
2 or by a judicial or probation officer, shall not be held liable  
3 in a civil or criminal action for assault, battery, false  
4 imprisonment or any conduct of a law enforcement officer,  
5 except for negligence, nor shall a person assisting in the  
6 performance of the test, or a hospital wherein blood is  
7 withdrawn in the performance of the test, be subject to civil  
8 or criminal liability for assault, battery, false imprisonment  
9 or any conduct of a law enforcement officer, except for  
10 negligence.

11 Section 7. [NEW MATERIAL] BLOOD-ALCOHOL TEST--LAW  
12 ENFORCEMENT, JUDICIAL OR PROBATION OFFICER UNAUTHORIZED TO MAKE  
13 ARREST OR DIRECT TEST EXCEPT IN PERFORMANCE OF OFFICIAL DUTIES  
14 AUTHORIZED BY LAW.--Nothing in the Boating While Intoxicated  
15 Act is intended to authorize a law enforcement officer, or a  
16 judicial or probation officer, to make an arrest or direct the  
17 performance of a blood-alcohol or drug test, except in the  
18 performance of his official duties or as otherwise authorized  
19 by law.

20 Section 8. [NEW MATERIAL] IMPLIED CONSENT TO SUBMIT TO  
21 CHEMICAL TEST.--

22 A. A person who operates a motorboat within this  
23 state shall be deemed to have given consent, subject to the  
24 provisions of the Boating While Intoxicated Act, to chemical  
25 tests of his blood or breath or both, approved by the

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1 scientific laboratory division of the department of health  
2 pursuant to the provisions of Section 24-1-22 NMSA 1978 as  
3 determined by a law enforcement officer, or for the purposes of  
4 determining the drug or alcohol content of his blood if  
5 arrested for any offense arising out of acts alleged to have  
6 been committed while the person was operating a motorboat while  
7 under the influence of an intoxicating liquor or drug.

8 B. The arrested person shall be advised by a law  
9 enforcement officer that failure to submit to a chemical test  
10 may be introduced into evidence in court and that the court,  
11 upon conviction, may impose increased penalties for the  
12 person's failure to submit to a chemical test.

13 C. A test of blood or breath or both, approved by  
14 the scientific laboratory division of the department of health  
15 pursuant to the provisions of Section 24-1-22 NMSA 1978, shall  
16 be administered at the direction of a law enforcement officer  
17 having reasonable grounds to believe the person to have been  
18 operating a motorboat while under the influence of an  
19 intoxicating liquor or drug.

20 D. A person who operates a motorboat in this state  
21 and who is involved in a fatal boating incident shall be deemed  
22 to have given consent, subject to the provisions of the Boating  
23 While Intoxicated Act, to mandatory chemical tests of his blood  
24 or breath or both, as determined by a law enforcement officer  
25 and approved by the scientific laboratory division of the

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1 department of health pursuant to the provisions of Section  
2 24-1-22 NMSA 1978.

3 Section 9. [NEW MATERIAL] CONSENT OF PERSON INCAPABLE OF  
4 REFUSAL NOT WITHDRAWN. --A person who is dead, unconscious or  
5 otherwise in a condition rendering him incapable of refusal  
6 shall be deemed not to have withdrawn the consent provided by  
7 the Boating While Intoxicated Act, and the test designated by  
8 the law enforcement officer may be administered.

9 Section 10. [NEW MATERIAL] ADMINISTRATION OF CHEMICAL  
10 TEST-- PAYMENT OF COSTS-- ADDITIONAL TESTS. --

11 A. Only the persons authorized by the Boating While  
12 Intoxicated Act shall withdraw blood from a person for the  
13 purpose of determining its alcohol or drug content. This  
14 limitation does not apply to the taking of samples of breath.

15 B. The person tested shall be advised by the law  
16 enforcement officer of the person's right to be given an  
17 opportunity to arrange for a physician, licensed professional  
18 or practical nurse or laboratory technician or technologist who  
19 is employed by a hospital or physician of his own choosing to  
20 perform a chemical test in addition to a test performed at the  
21 direction of a law enforcement officer.

22 C. Upon the request of the person tested, full  
23 information concerning the test performed at the direction of  
24 the law enforcement officer shall be made available to him as  
25 soon as it is available from the person performing the test.

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1 D. The agency represented by the law enforcement  
2 officer at whose direction the chemical test is performed shall  
3 pay for the chemical test.

4 E. If a person exercises his right under Subsection  
5 B of this section to have a chemical test performed upon him by  
6 a person of his own choosing, the cost of that test shall be  
7 paid by the agency represented by the law enforcement officer  
8 at whose direction a chemical test was administered pursuant to  
9 Section 8 of the Boating While Intoxicated Act.

10 Section 11. [NEW MATERIAL] USE OF TESTS IN CRIMINAL OR  
11 CIVIL ACTIONS--LEVELS OF INTOXICATION--MANDATORY CHARGING. --

12 A. The results of a test performed pursuant to the  
13 Boating While Intoxicated Act may be introduced into evidence  
14 in a civil action or criminal action arising out of the acts  
15 alleged to have been committed by the person tested for  
16 operating a motorboat while under the influence of intoxicating  
17 liquor or drugs.

18 B. When the blood or breath of the person tested  
19 contains:

20 (1) an alcohol concentration of five one  
21 hundredths or less, it shall be presumed that the person was  
22 not under the influence of intoxicating liquor; or

23 (2) an alcohol concentration of more than five  
24 one hundredths but less than eight one hundredths, no  
25 presumption shall be made that the person either was or was not

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1 under the influence of intoxicating liquor. However, the  
2 amount of alcohol in the person's blood or breath may be  
3 considered with other competent evidence in determining whether  
4 the person was under the influence of intoxicating liquor.

5 C. When the blood or breath of the person tested  
6 contains an alcohol concentration of eight one hundredths or  
7 more, the arresting officer shall charge him with a violation  
8 of Section 3 of the Boating While Intoxicated Act.

9 D. The determination of alcohol concentration shall  
10 be based on the grams of alcohol in one hundred milliliters of  
11 blood or the grams of alcohol in two hundred ten liters of  
12 breath.

13 E. The alcohol concentration in a person's blood or  
14 breath shall be determined by a chemical test administered to  
15 the person within three hours of the alleged boating while  
16 under the influence of intoxicating liquor. In a prosecution  
17 pursuant to the provisions of the Boating While Intoxicated  
18 Act, it is a rebuttable presumption that a person is in  
19 violation of the provisions of that act if he has an alcohol  
20 concentration of eight one hundredths or more in his blood or  
21 breath as determined by a chemical test administered to the  
22 person within three hours of the alleged boating while under  
23 the influence of intoxicating liquor. If the chemical test is  
24 administered more than three hours after the alleged boating  
25 while under the influence of intoxicating liquor, the test

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1 result is admissible as evidence of the alcohol concentration  
2 in the person's blood or breath at the time of the alleged  
3 boating and the trier of fact shall determine what weight to  
4 give the test result.

5 F. The presumptions in Subsection B of this section  
6 do not limit the introduction of other competent evidence  
7 concerning whether the person was under the influence of  
8 intoxicating liquor.

9 G. If a person is convicted of operating a  
10 motorboat while under the influence of intoxicating liquor or  
11 drugs, the trial judge shall be required to inquire into past  
12 convictions of the person for operating a motorboat while under  
13 the influence of intoxicating liquor or drugs before sentence  
14 is entered in the matter.

15 Section 12. [NEW MATERIAL] MOTORBOATS--INFLUENCE OF  
16 INTOXICATING LIQUOR OR DRUGS--FEE UPON CONVICTION. --

17 A. A person convicted of a violation of the Boating  
18 While Intoxicated Act shall be assessed by the court, in  
19 addition to any other fee or fine, a fee of sixty-five dollars  
20 (\$65.00) to defray the costs of chemical and other tests used  
21 to determine the influence of intoxicating liquor or drugs.

22 B. All fees collected pursuant to the provisions of  
23 this section shall be transmitted monthly to the crime  
24 laboratory fund. All balances in the crime laboratory fund  
25 collected pursuant to this section are appropriated to the

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1 administrative office of the courts for payment upon invoice to  
2 the scientific laboratory division of the department of health  
3 for the costs of chemical and other tests used to determine the  
4 influence of intoxicating liquor or drugs.

5 C. Payment of funds out of the crime laboratory  
6 fund of fees collected pursuant to this section shall be made  
7 upon vouchers issued and signed by the director of the  
8 administrative office of the courts upon warrants drawn by the  
9 department of finance and administration.

10 Section 13. Section 24-1-22 NMSA 1978 (being Laws 1981,  
11 Chapter 165, Section 1) is amended to read:

12 "24-1-22. SCIENTIFIC LABORATORY DIVISION-- TESTING  
13 METHODS-- CERTIFICATION. --

14 A. The scientific laboratory division of the  
15 [~~health and environment~~] department of health is authorized to  
16 promulgate and approve satisfactory techniques or methods to  
17 test persons believed to be operating a motor vehicle or a  
18 motorboat under the influence of drugs or alcohol and to issue  
19 certification for test operators and their instructors [~~which~~]  
20 that shall be subject to termination or revocation at the  
21 discretion of the scientific laboratory division. The  
22 scientific laboratory division is further authorized to  
23 establish or approve quality control measures for alcohol  
24 breath testing and to establish or approve standards of  
25 training necessary to [~~assure~~] ensure the qualifications of

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1 individuals conducting these analyses or collections.

2 B. The scientific laboratory division [~~will~~] shall  
3 establish criteria and specifications for equipment, training,  
4 quality control, testing methodology, blood-breath  
5 relationships and the certification of operators, instructors  
6 and collectors of breath samples.

7 C. All laboratories analyzing breath, blood or  
8 urine samples pursuant to the provisions of the Implied Consent  
9 Act and the Boating While Intoxicated Act shall be certified by  
10 the scientific laboratory division. The certification shall be  
11 granted in accordance with the rules and regulations of the  
12 scientific laboratory division and shall be subject to  
13 termination or revocation for cause. "

14 Section 14. Section 66-12-11 NMSA 1978 (being Laws 1959,  
15 Chapter 338, Section 10, as amended) is amended to read:

16 "66-12-11. PROHIBITED OPERATION. --

17 A. [~~No~~] A person shall not operate any motorboat or  
18 vessel or manipulate any water skis, surfboard or similar  
19 device in a reckless or negligent manner so as to endanger the  
20 life or property of any person.

21 B. [~~No~~] A person shall not operate any [~~motorboat~~  
22 ~~or~~] vessel, not defined as a motorboat pursuant to the  
23 provisions of the Boating While Intoxicated Act, or manipulate  
24 any water skis, surfboard or similar device while intoxicated  
25 or under the influence of any narcotic drug, barbiturate or

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1 marijuana. "

2 Section 15. EFFECTIVE DATE. --The effective date of the  
3 provisions of this act is July 1, 2003.

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